

LETTER OF FINDINGS NUMBER: 97-0438 ITC  
Income Tax

For The Period Ending: Calendar of 1991

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ISSUE

**I. Financial Institutions Tax - Statute of Limitations**

**Authority** - IC 6-5.5-6-6, IC 6-8.1-5-2, UACC Midwest v. Indiana Department of State Revenue, 629 N.E. 2d 1295 (Ind. Tax 1994)

The taxpayer protests the indefinite extension of the statute of limitations.

STATEMENT OF FACTS

The taxpayer is a bank holding company located in Indiana with two Indiana subsidiaries. The subsidiaries are two banking operations. The taxpayer has filed a consolidated FIT return for the year in question.

**I. Financial Institutions Tax - Statute of Limitations**

DISCUSSION

The taxpayer protests the assessment for the 1991 tax year. The taxpayer argues that (1) there is no modification of the federal return, and (2) the taxpayer's failure to notify the Department of the modification does not extend the statute.

**Modification.** The taxpayer was audited by the IRS for the years 1991, 1992, and 1993. An assessment was made to the 1991 tax year. Since a modification was made, the taxpayer was obligated to notify the Department of the modification.

The taxpayer argues there is no federal audit, only a settlement agreement with the IRS. However, a review of the taxpayer's records reveals that the federal income was modified for 1991 as a result of a federal tax audit.

**Statute of Limitations.** The taxpayer argues the word "notification" in IC 6-5.5-6-6 does not have the same meaning as "filing a return" in IC 6-8.1-5-2.

A federal audit was completed on June 28, 1995. The federal audit included the years 1991, 1992, and 1993. As a result of the federal audit, the taxpayer was required to notify the Department of the modification in the federal return according to IC 6-5.5-6-6.

IC 6-5.5-6-6 states:

(a) Each taxpayer shall notify the department in writing of any alteration or modification of a federal income tax return . . . including any modification or alteration in the amount of tax, regardless of whether the modification or assessment results from an assessment.

(b) The taxpayer shall file the notice in the form required by the department within one hundred twenty (120) days after the alteration or modification is made by the taxpayer or finally determined, whichever occurs first.

(c) The taxpayer shall pay an additional tax or penalty due under this article upon notice or demand from the department.

The taxpayer failed to notify the Department of the change to its federal return. The Department states that because the taxpayer failed to notify the Department, the statute becomes open as the taxpayer failed to file (IC 6-8.1-5-2). This is because the form of notice required by the Department is an amended return. Also, IC 6-5.5-6-6 implies the taxpayer is to convey (i.e. notify) enough information to the Department so the Department can make an assessment. In arguing substance over form, "notification" takes on the characteristics of a return, and therefore, the word notification is similar to a return. In the past, substitute forms have been allowed as returns. This is supported in *UACC Midwest*. Here the Court accepted a substitute form (amended return) for a claim-for-refund.

FINDING

The taxpayer's protest is denied. The taxpayer (1) is required to notify the Department of the federal return modification, and (2) the failure to notify the Department extends the statute.